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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JONATHAN CARRILLO et al., Defendants and Appellants.	B203499 (Los Angeles County Super. Ct. No. KA073622)

APPEALS from a judgment of the Superior Court of Los Angeles County, Bruce F. Marrs, Judge. Affirmed in part, reversed in part with directions.

Eric R. Larson, under appointment by the Court of Appeal, for Defendant and Appellant Jonathan Carrillo.

John Steinberg, under appointment by the Court of Appeal, for Defendant and Appellant Anthony Chairez.

Ralph H. Goldsen, under appointment by the Court of Appeal, for Defendant and Appellant Raymond Chairez.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle, Chung L. Mar, and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

Defendants Jonathan Carrillo, Anthony Chairez, and Raymond Chairez[1] were involved in a brawl in which one person was killed and seven were injured. Defendants were charged with one count of murder (Pen. Code, § 187, subd. (a) (count 1))[2] and seven counts of attempted murder (§§ 187, subd. (a), 664 (counts 2-8)). After a joint trial, the jury acquitted defendants of the charged offenses,[3] but returned guilty verdicts on three lesser included offenses: (1) Carrillo and Raymond were found guilty of voluntary manslaughter on count 1 (§ 192, subd. (a)); (2) all three defendants were found guilty of attempted voluntary manslaughter on count 2 (§§ 664, 192, subd. (a)); and (3) Carrillo was found guilty of attempted voluntary manslaughter on count 8 (§§ 664, 192, subd. (a)).

Defendants have appealed from the judgment, raising issues of insufficient evidence, prosecutorial misconduct, instructional error, and sentencing error. With the exception of one sentencing issue, we reject defendants' contentions. The judgment is affirmed in part and reversed in part with directions.

BACKGROUND

At about 2 a.m. on December 10, 2005, Carrillo got into an argument with another patron as they were leaving a Diamond Bar bowling alley. The argument quickly escalated into a large melee in the parking lot. Carrillo, Raymond, and Anthony were identified by many observers and victims as the aggressors. Although Carrillo and Raymond were identified as gang members, the jury rejected all of the gang enhancement

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[1] Given that Anthony Chairez and Raymond Chairez are brothers who share the same last name, for the sake of clarity and convenience, we will refer to them by their first names, with no disrespect intended.

[2] All further undesignated statutory references are to the Penal Code.

[3] Count 5, however, was dismissed by the trial court as to Carrillo only after the jury deadlocked as to him.

allegations. (§ 186.22, subd. (b)(1)(A).) The victims[4] in counts 1-6 comprised a group of coworkers from a sporting goods store.

The jury made the following findings regarding the enhancement allegations for personal use of a knife (§ 12022, subd. (b)(1)) and personal infliction of great bodily injury (§ 12022.7, subd. (a)) in counts 1, 2, and 8. In count 1 (the fatal stabbing of Brian Zelmanski for which Carrillo and Raymond were convicted of voluntary manslaughter), the jury found both the knife use and great bodily injury enhancement allegations true as to Carrillo, but not true as to Raymond.

In count 2 (the beating and stabbing of Daniel Cortes for which all three defendants were convicted of attempted voluntary manslaughter), only Carrillo was charged with the knife use enhancement allegation, which the jury found true. All three defendants were charged in count 2 with the great bodily injury enhancement allegation, which the jury found true as to Carrillo and Raymond, but not true as to Anthony.

In count 8 (the beating and stabbing of Jesse Duarte for which Carrillo was convicted of attempted voluntary manslaughter), the jury found both the knife use and great bodily injury enhancement allegations true as to Carrillo.

In summary, the jury verdicts established that during the melee: (1) Zelmanski, the victim in count 1, was fatally stabbed by Carrillo, who was aided and abetted by Raymond; (2) Cortes, the victim in count 2, suffered great bodily injury as a result of being beaten by Raymond and stabbed by Carrillo, who were aided and abetted by Anthony; and (3) Duarte, the victim in count 8, was stabbed by Carrillo.

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[4] The victims were Brian Zelmanski (count 1), Daniel Cortes (count 2), Steven Serrano (count 3), Juan Hurtado (count 4), Allen Souza (count 5), Jose Ceja (count 6), Mario Avila (count 7), and Jesse Duarte (count 8).

DISCUSSION

I. Anthony's Conviction on Count 2 on an Aiding and Abetting Theory

Anthony challenges the sufficiency of the evidence to support his conviction on count 2 for the attempted voluntary manslaughter of Cortes on an aiding and abetting theory. The contention lacks merit.

"A person who knowingly aids and abets criminal conduct is guilty of not only the intended crime but also of any other crime the perpetrator actually commits that is a natural and probable consequence of the intended crime. The latter question is not whether the aider and abettor *actually* foresaw the additional crime, but whether, judged objectively, it was *reasonably* foreseeable. (*People v. Prettyman* [(1996)] 14 Cal.4th [248,] 260-262.)" (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1133; *People v. Gonzales* (2001) 87 Cal.App.4th 1, 9-10.) In this case, the jury was instructed that one who knowingly aids and abets in the intended or target offense of assault with a deadly weapon or by means of force likely to produce great bodily injury (§ 245, subd. (a)) is guilty of any other crime that the perpetrator actually commits that is a natural and probable consequence of the target offense. In this regard, the jury received CALJIC Nos. 3.00 (principals defined), 3.01 (aiding and abetting defined), 3.02 (liability of principals for natural and probable consequences), 9.02 (assault with a deadly weapon or by means of force likely to produce great bodily injury), and 9.00 (assault).

The record contains substantial evidence from which the jury reasonably could have found that Anthony and Raymond were armed with knives during the melee. According to Danny Garcia, a defense witness who worked with the victims in counts 1-6, when he tried to pull his coworker Cortes (the victim in count 2) away from a group of "three to six or seven people" who were beating him, Garcia "heard them say, get the shanks out." The jury reasonably could have inferred that Anthony and Raymond, who were identified by Cortes as "the two guys [who] rushed me," began using knives after this statement was made, given that they were thereafter seen assaulting Jose Ceja (the victim in count 6) and Juan Hurtado (the victim in count 4) with knives. Hurtado

testified that as Anthony was "[t]rying to stab" Ceja, he managed to push Anthony away from Ceja, but he was then stabbed by Raymond. Ceja testified that after Hurtado pushed Anthony away, Raymond said, "Oh, you want to get shanked? You want to get shanked?"

Based on the above evidence, the jury reasonably could have concluded that Anthony and Raymond, who are brothers, were fighting as a team and were using knives during the melee. Significantly, Anthony's brief does not mention this adverse evidence, but claims that "[t]here was no evidence that appellant possessed a knife or personally stabbed anyone."

Given that Anthony bears the burden of affirmatively demonstrating error, it is insufficient to simply claim there was no evidence that he possessed a knife or personally stabbed anyone. Anthony bears the burden of both citing the adverse evidence regarding his use of a knife and explaining why it was insufficient to support his conviction.

"[T]o prevail on a sufficiency of the evidence argument, the defendant must present his case to us consistently with the substantial evidence standard of review. That is, the defendant must set forth in his opening brief *all* of the material evidence on the disputed elements of the crime in the light most favorable to the People, and then must persuade us that evidence cannot reasonably support the jury's verdict. (See *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282.) If the defendant fails to present us with all the relevant evidence, or fails to present that evidence in the light most favorable to the People, then he cannot carry his burden of showing the evidence was insufficient because support for the jury's verdict may lie in the evidence he ignores." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1574.)

"[W]hen a criminal defendant claims on appeal that his conviction was based on insufficient evidence of one or more of the elements of the crime of which he was convicted, we *must* begin with the presumption that the evidence of those elements *was* sufficient, and the defendant bears the burden of convincing us otherwise. To meet that burden, it is not enough for the defendant to simply contend, 'without a statement or analysis of the evidence, . . . that the evidence is insufficient to support the judgment[] of

conviction.' (*People v. Daniels* (1948) 85 Cal.App.2d 182, 185.) Rather, he must *affirmatively demonstrate* that the evidence is insufficient." (*People v. Sanghera*, *supra*, 139 Cal.App.4th at p. 1573.)

We are satisfied that the record contains sufficient evidence from which a jury could have reasonably concluded that Anthony intended to aid and abet Raymond and Carrillo in the target crime of assault with a deadly weapon or by means of force likely to inflict great bodily injury (§ 245, subd. (a)), which, under the natural and probable consequences doctrine, rendered him liable for the attempted voluntary manslaughter of Cortes. Accordingly, we reject Anthony's contention that the evidence was insufficient to support his conviction on count 2 on a theory of aiding and abetting.

II. Prosecutorial Misconduct

Anthony contends that the prosecutor committed misconduct in closing argument by misstating the law regarding aiding and abetting.[5] Although it is misconduct for the prosecutor to misstate the applicable law (*People v. Boyette* (2002) 29 Cal.4th 381, 435), we perceive no misstatement of the law in this case.[6]

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[5] Anthony challenges the italicized portions of the prosecutor's following statements as prosecutorial misconduct: (1) "[I]f you believe that they all took part in this, Raymond Chairez, Anthony Chairez, and Jonathan Carrillo, *if they all took part in this affair, they took part in this melee and this mayhem, then they are all guilty*, even if only Carrillo was the one that did the stabbing." (2) "*It doesn't matter who did what. In a melee, you're not going to be able to identify each and every person*, and the law understands that." (3) "*If you believe that they actively participated in this affair, then they are all guilty, regardless of who did what. That's what the law of aiding and abetting tells you*." (4) "[*I*]*f you believe from all the witness*[*es*'] *testimony, based on the D.N.A. that you see in this case, that any of these three guys are involved, then they are involved. It doesn't matter what they did*; *it doesn't matter who identified what. If you believe they were actively involved in that crime scene, they are all guilty just the same*."

[6] All three defendants objected to the prosecutor's fourth statement, as quoted in footnote 5 of this opinion, on the ground that it "misstates California law." The trial court responded to this objection by immediately admonishing the jury to "apply the law as I gave it to you."

(Fn. continued.)

Viewed in their proper context, the relevant statements did not equate aiding and abetting with participation in a fistfight, as Raymond contends. The Attorney General correctly points out that the relevant statements must be considered in light of the prosecutor's preliminary statement that, in order to be liable on a theory of aiding and abetting, the aider and abettor must have both *knowledge* of the perpetrator's unlawful purpose *and* the *intent* or purpose of aiding and abetting the crime. The prosecutor stated: "[T]he concept of aiding and abetting says that if a person aids and abets the commission or attempted commission of a crime, when he or she, with the knowledge of the unlawful purpose of the perpetrator, and with the intent or purpose of committing or encouraging or facilitating a crime, then he or she is guilty just the same as the perpetrator." Defendants raised no objection to this statement, which is consistent with the law on aiding and abetting as stated in *People v. Prettyman*, *supra*, 14 Cal.4th at p. 259, and *People v. McCoy* (2001) 25 Cal.4th 1111, 1116-1117.

Moreover, the trial court properly instructed the jury on the law of aiding and abetting, and we presume the jury followed those instructions. (*People v. Boyette*, *supra*, 29 Cal.4th at p. 436.) The jury also received CALJIC No. 1.00, which informed them that "[i]f anything concerning the law said by the attorneys in their arguments or at any other time during the trial conflicts with my instructions on the law, you must follow my instructions."

On appeal, the Attorney General argues that the objection was insufficient to preserve the issue of prosecutorial misconduct on appeal, because defense counsel did not cite prosecutorial misconduct as the basis for the objection or request a curative admonition. (Citing *People v. McDermott* (2002) 28 Cal.4th 946, 1001.) We disagree. As stated above, it is misconduct for the prosecutor to misstate the applicable law. (*People v. Boyette*, *supra*, 29 Cal.4th at p. 435.) Accordingly, an objection based on the prosecutor's misstatement of the law is the functional equivalent of an objection based on prosecutorial misconduct. Moreover, given that the trial court immediately responded to the objection by admonishing the jury to "apply the law as I gave it to you," there was no need for defense counsel to request an admonition.

III. Instructional Error – Involuntary Manslaughter

Raymond contends that the trial court erred in refusing to instruct the jury that it could find him guilty of involuntary manslaughter on count 2 for the fatal stabbing of Zelmanski. We disagree.

"Generally, involuntary manslaughter is a lesser offense included within the offense of murder. (*People v. Prettyman*[, *supra*,] 14 Cal.4th 248, 274.) Due process requires that the jury be instructed on a lesser included offense *only* when the evidence warrants such an instruction. (*Hopper v. Evans* (1982) 456 U.S. 605, 611; *People v. Avena* (1996) 13 Cal.4th 394, 424; *People v. Kaurish* [(1990)] 52 Cal.3d [648,] 696.)" (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1145.) "In determining whether or not a refused instruction should have been given, an appellant is entitled to have the evidence viewed in the light most favorable to him. (*Costa v. A. S. Upson Co*., 215 Cal.App.2d 185, 187.)" (*Pekus v. Lake Arrowhead Boat Co*. (1967) 255 Cal.App.2d 864, 870.)

Section 192, subdivision (b) defines involuntary manslaughter as the unlawful killing of a human being, without malice, either "in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. . . ." In addition, the Supreme Court has defined involuntary manslaughter as the unlawful killing of a human being, without malice, that occurs during the commission of a felony that is not inherently dangerous to human life, if that felony was committed without due caution and circumspection. (*People v. Burroughs* (1984) 35 Cal.3d 824, 835, overruled on another ground in *People v. Blakeley* (2000) 23 Cal.4th 82, 89.)

Raymond asserts that the evidence supports "a compelling inference" that at the same time that Carrillo was stabbing Zelmanski, he and Anthony were busy elsewhere beating Cortes, and they did not know of Carrillo's use of a knife until after "the killing of Zelmanski was 'complete.'" Raymond contends that because none of the prosecution witnesses saw Zelmanski being stabbed and different assaults were occurring at different places, the evidence, viewed in the light most favorable to the defense, supports a reasonable inference that he became "aware of the knife only when Carrillo used it to

stab Cortes, by which point the killing of Zelmanski was 'complete.'" Raymond cites *People v. Esquivel* (1994) 28 Cal.App.4th 1386, 1396, for the proposition that "just as a conspirator cannot be held liable for crimes committed before he became a conspirator, an aider and abettor should not be held liable for a homicide committed before he became an accomplice. In either instance, the defendant's later joinder does not aid or encourage the commission of the homicide."

Even assuming for the sake of discussion that Raymond and Anthony were beating Cortes while Carrillo was stabbing Zelmanski, and that Raymond was unaware of Carrillo's use of a knife until after Zelmanski was killed, the evidence would not warrant an involuntary manslaughter instruction given the undisputed evidence that Raymond and several others were punching and kicking Cortes, who was surrounded by assailants and suffered numerous knife wounds. "That the use of hands or fists alone may support a conviction of assault 'by means of force likely to produce great bodily injury' is well established ([*People v. Wingo* (1975) 14 Cal.3d 169, 176]; *People v. Armstrong* (1992) 8 Cal.App.4th 1060, 1066; see *People v. Duke* (1985) 174 Cal.App.3d 296, 302-303 [when hands, fists and feet are employed in an assault, normally the charge will be assault with force likely to produce great bodily injury] . . . .)" (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028.) The evidence, viewed in the light most favorable to Raymond, does not support a theory that he was engaged in a misdemeanor battery or a felony not inherently dangerous to human life.

In any event, by finding that Raymond had assaulted Zelmanski with force likely to produce great bodily injury (the target offense), intended to kill Cortes, and personally inflicted great bodily injury upon him, the jury eliminated the possibility that Raymond was engaged in either a misdemeanor battery or a felony not inherently dangerous to human life. Accordingly, any conceivable error in failing to instruct on involuntary manslaughter could not have been prejudicial. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Breverman* (1998) 19 Cal.4th 142, 165.)

IV. Instructional Error – Target Offense

Raymond contends that the trial court had a sua sponte duty to instruct the jury that it had the option of convicting him of the uncharged target offense of aggravated assault. (§ 245, subd. (a).) In support of his position, Raymond cites *People v. Woods* (1992) 8 Cal.App.4th 1570, 1588 (*Woods*), which stated that "in determining aider and abettor liability for crimes of the perpetrator beyond the act originally contemplated, the jury must be permitted to consider uncharged, necessarily included offenses where the facts would support a determination that the greater crime was not a reasonably foreseeable consequence but the lesser offense was such a consequence. Otherwise, as we shall discuss, the jury would be given an unwarranted, all-or-nothing choice for aider and abettor liability. (See *People v. Wickersham* (1982) 32 Cal.3d 307, 324 . . . .)"

We conclude that *Woods* does not assist Raymond because aggravated assault is not a necessarily included offense of murder. Under the so-called elements test, "if the statutory elements of the greater offense include all of the statutory elements of the lesser offense, the latter is necessarily included in the former." (*People v. Reed* (2006) 38 Cal.4th 1224, 1227.)

Section 245, subdivision (a)(1) defines aggravated assault as "an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury . . . ." It is established that "assault with a deadly weapon (§ 245) is not an offense necessarily included within murder, even if the murder in fact is carried out with a deadly weapon. Murder requires proof of an unlawful killing of a human being committed with malice. (§ 187, subd. (a).) Assault with a deadly weapon requires proof that a deadly weapon was used. Because in the abstract a murder can be committed without a deadly weapon, assault with a deadly weapon is not an offense necessarily included within the crime of murder. (*People v. Benjamin* (1975) 52 Cal.App.3d 63, 71; see also *People v. Zapata* (1992) 9 Cal.App.4th 527, 533, disapproved on other grounds in *People v. Fields* (1996) 13 Cal.4th 289, 305; *In re David S.* (1983) 148 Cal.App.3d 156, 158.)" (*People v. Sanchez* (2001) 24 Cal.4th 983, 988, disapproved on other grounds in *People v. Reed*, *supra*, 38 Cal.4th at p. 1228.)

Similarly, assault by any means of force likely to produce great bodily injury is not a necessarily included offense of murder, even if deadly force was used, because in the abstract, a murder can be committed without any force, such as by using poison. Accordingly, because aggravated assault is not a necessarily included offense of murder, the trial court was not required to provide the option of an aggravated assault conviction.

V. *Cunningham* Error

Defendants contend that the trial court violated *Cunningham v. California* (2007) 549 U.S. 270 (*Cunningham*) by imposing the following upper terms: (1) on count 1, Carrillo and Raymond each received the upper term of 11 years for voluntary manslaughter; and (2) on count 2, Anthony received five and a half years, or one-half the upper term of 11 years, for attempted voluntary manslaughter. We disagree.

Cunningham held that California's determinate sentencing law violated the Sixth Amendment by allowing the trial court to impose sentence in reliance on factors not found true by a jury. In response to *Cunningham*, the California Legislature in 2007 amended section 1170, subdivision (b) by deleting language that required the middle term to be imposed in the absence of aggravating or mitigating circumstances. (Stats. 2007, ch. 3.) As amended in 2007, section 1170, subdivision (b) states that "[w]hen a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court," which shall select the term that, "in the court's discretion, best serves the interests of justice."

The trial court imposed sentence on Anthony on September 19, 2007, and on Raymond and Carrillo on October 1, 2007, well after the March 30, 2007 effective date of the 2007 amendment. (Stats. 2007, ch. 3.) In addition, the sentences were imposed after the California Supreme Court issued its decision in *People v. Sandoval* (2007) 41 Cal.4th 825 on July 19, 2007. *Sandoval* held that when a defendant is resentenced due to *Cunningham* error, the trial court on remand may exercise its discretion to impose any of the three terms available for the offense, consistent with the 2007 amendment to the determinate sentencing law. (*Id.* at p. 846.) *Sandoval* also held that the exercise of

discretion on remand does not violate due process or the ex post facto clause. (*Id.* at p. 853.)

We assume in favor of the judgment that the trial court was aware of its discretion under both the 2007 amendment and *Sandoval* when it imposed sentence in this case. As the middle term is no longer the presumptive term and the trial court may exercise its discretion to impose any of the three terms, the imposition of the upper term in reliance on facts not found by the jury is no longer a constitutional violation and there was no *Cunningham* error.

VI. Anthony's Presentence Custody Credits

The trial court imposed a 15 percent limitation upon Anthony's presentence worktime credits under section 2933.1, which applies to persons convicted of a violent felony as defined in section 667.5. Anthony contends that because attempted voluntary manslaughter is not one of the violent felonies listed in section 667.5, the 15 percent limitation under section 2933.1 does not apply to him. The Attorney General concedes that Anthony's "contention appears correct" and "the limitation set forth in section 2933.1 was inapplicable to him."

We conclude that the 15 percent limitation on worktime credits under section 2933.1 should not have been imposed against Anthony, because he was not convicted of a violent felony as defined in section 667.5.[7] Accordingly, the matter must be remanded to recalculate Anthony's presentence custody credits.

VII. Victim Restitution

The trial court ordered defendants to pay, jointly and severally, victim restitution of $7,799.66 for economic losses sustained by Zelmanski (the victim in count 1), Duarte (the victim in count 8), and Avila (the victim in count 7) as a result of the crimes in this

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[7] The same does not hold true for Carrillo and Raymond, who were convicted of voluntary manslaughter, which is a violent felony under section 667.5 subdivision (c)(1).

case. (§ 1202.4.) Carrillo contends that the victim restitution order was unauthorized as to Avila, because he was acquitted of count 7 in which Avila was the alleged victim. We disagree. The trial court stated that it was authorized to impose victim restitution as to Avila because of the causal relationship between Avila's injuries and Carrillo's crimes, based on evidence that Avila was injured in the melee and his blood was identified on the knife that was found in the car in which defendants were apprehended upon leaving the scene.

Section 1202.4, subdivision (f) provides in pertinent part that "in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court." Thus, the focus of our inquiry is whether Avila suffered economic loss as a consequence of the crimes of which Carrillo was convicted.

Carrillo takes the position that since he was acquitted of the count in which Avila was the named victim, Avila did not suffer his loss as a result of Carrillo's conduct as a matter of law. We disagree. As the trial court pointed out, Avila's blood was found on the knife used either by Carrillo or one of his codefendants. More importantly, there is no dispute that Carrillo started the fight that led to the free-for-all in the parking lot by striking Steven Serrano in the jaw with his fist. Nor is there any doubt that Carrillo stabbed several individuals during the brawl that ensued. In these circumstances, there is a clear causal connection between the crimes of which Carrillo was convicted and Avila's economic loss. But for Carrillo's instigation of the fight and his production and use of a deadly weapon, Avila would not have been injured.

We are aware of two recent cases that appear to be contrary to our view. Each is distinguishable. In *People v. Percelle* (2005) 126 Cal.App.4th 164, the court held that the defendant could not be ordered to pay restitution related to the theft of a vehicle because he was acquitted of that crime. The appellate panel determined that the restitution the defendant was ordered to pay did not result from any crime for which he had been

convicted. It noted, however, "[t]hat is not to say that an acquittal on one count will preclude the imposition of a restitution order under all circumstances. We merely hold that in the nonprobation context, a restitution order is not authorized *where the defendant's only relationship to the victim's loss is by way of a crime of which the defendant was acquitted.*" (*Id.* at p. 180, italics added.) And in *People v. Lai* (2006) 138 Cal.App.4th 1227, the court reversed a restitution order requiring the defendant to compensate the victims of uncharged crimes. The evidence showed that the defendant had fraudulently obtained aid during a two and a half year period before the commission of the crimes for which he was convicted. Finding that section 1202.4 authorized restitution for losses caused by the criminal conduct for which the defendant was convicted, the court concluded that he could not be ordered to make restitution for acts that occurred prior to the charging period. (*Id.* at p. 1248.)

Here, as we have explained, Carrillo's connection to Avila's loss is not based solely on a criminal charge of which he was acquitted. Nor does the restitution order force Carrillo to compensate Avila for acts performed outside the dates of the alleged crimes. Where there is causal relationship between the crimes for which a defendant was convicted and the losses suffered by the victim, restitution is appropriate even if the defendant is acquitted of the specific crime related to that victim. While we recognize that the element of causation will oftentimes be difficult to establish in light of a defendant's acquittal, where the commission of the crimes are intertwined closely in time and space, a restitution order properly punishes a defendant for his or her participation. The restitution order was appropriate here.

DISPOSITION

The matter is remanded with directions to recalculate Anthony's presentence custody credits in accordance with section 4019 without applying the worktime credit limitations in section 2933.1. The superior court is directed to forward a corrected

abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.